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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,120	03/11/2004	Lawrence M. Janesky	257-011631-US(PAR)	8802
2512	7590	11/24/2008		
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			EXAMINER GILBERT, WILLIAM V	
			ART UNIT	PAPER NUMBER
			3635	
			MAIL DATE	DELIVERY MODE
			11/24/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,120	<b>Applicant(s)</b> JANESKY, LAWRENCE M.	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

This is a final office action. Claims 1-6 are pending and examined.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-6** are rejected under 35 U.S.C. 102(b) as being anticipated by Kuypers (U.S. Patent No. 4,745,716).

Claim 1: Kuypers discloses a drain panel assembly comprising a plastic drain panel (Col. 3, lines 23-26 and Col. 4, lines 23-26) having an upper panel section (Fig. 12: 73, 74 and 82) which extends from a lower skirt ("A", "B" from attached Fig. 12, below), a spacer means (73) integral with a rear surface of the upper panel, the lower skirt having a substantially continuous wall portion extending substantially continuously in a direction of the length of the footing (as shown), the wall portion extending outwardly from the upper

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panel away from the wall and downwardly substantially continuously along the length of the skirt (see portion "A" above) and terminating in a wall edge in contact with the supporting footing section (62) an outer surface of the skirt section faces away from the panel section to form a longitudinal water conduit (formed by portions 69) extending along the length of the footing an open to the wall interface to receive water, and the conduit has a plurality of spaced openings (see Fig. 12: proximate 83) for draining water outwardly over the footing surface into a drain tile. Applicant should respectfully note that the drain tile is not positively claimed, but is claimed in functional language only.

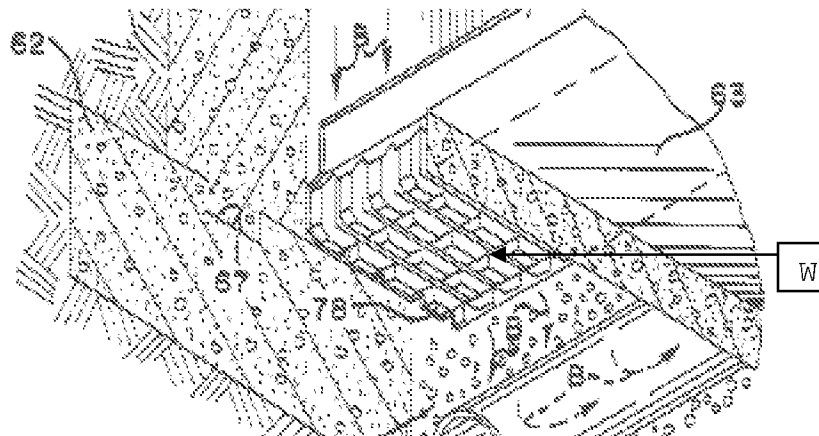


Figure 11 from Kuypers

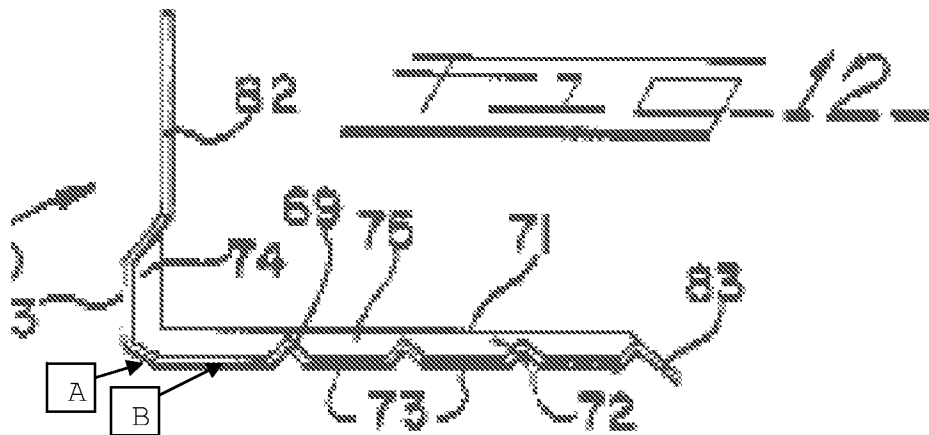


Figure 12 from Kuypers

Claim 2: the lower skirt section functions as a cover means which would shield the drain openings and footing surfaces from being sealed when the concrete floor (63) is poured thereover.

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Claim 3: the cover means is a plurality of spaced narrow shield strips (71, each member 71 functions as a shield strip) of plastic which are contoured to provide a water flow passage between the underside and the surface of the footing, and the passage communicated between one of the drain openings and the edge of the footing (as shown).

Claim 4: the strip has depressions (Fig. 12: proximate 75) which would provide concrete receiving wells, which would fill with concrete when a concrete floor is poured thereover. Please note that the poured floor is not claimed, but would be considered product by process. As written, it is interpreted as functional language only. If a concrete floor were poured, it would clearly fill the wells of the member.

Claim 5: the cover means is plastic and having ribs (as shown by portion "W" from attached Fig. 11 above; the member between portion 71) which support the strip on the footing surface with the underside of the strip to provide a flow space between the draining opening and the edge of the footing.

Claim 6: the conduit extending along the length of the footing and open to the interface is continuous without obstruction to flow of water along the length of the footing (as shown, the conduit does not prohibit water flow).

***Response to Arguments***

2. The following addresses applicant's remarks/arguments dated 11 August 2008:

**Drawing Objections:**

Applicant's argument with respect to the drawings is persuasive and the objection is withdrawn.

**Claim Rejections - 35 USC §112:**

Applicant's amendment to the claims overcomes the rejection and it is withdrawn.

**Claim Rejections - 35 USC §103:**

Applicant's arguments with respect to the claims is moot based on the new grounds of rejection cited above.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./  
Examiner, Art Unit 3635  
/Basil Katcheves/  
Primary Examiner, Art Unit 3635